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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/676,170	10/02/2003	Ross J. Hamel	8932-684-999	6800
51832	7590	07/27/2007		
JONES DAY 222 EAST 41ST STREET NEW YORK, NY 10017-6702			EXAMINER WERNER, JONATHAN S	
			ART UNIT	PAPER NUMBER
			3732	
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			07/27/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No. 10/676,170	Applicant(s) HAMEL, ROSS J.	
	Examiner Jonathan Werner	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7,9-17,19,21,23,25-36,40,41,44-50 and 52-59 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7,9-17,19,21,23,25-36,40-41,44-50,52-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This action is in response to Applicant's amendment received 5/3/07.

Specification

The abstract of the disclosure is objected to because the final two sentences contain improper language for an abstract since they appear to be disclaimers and do not further provide sufficient disclosure of the invention. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 9-10, 14-17, 19, 21, 23, 25-29, and 52-59 are rejected under 35 U.S.C. 102(b) as being anticipated by Wells (US 5,904,650). Wells discloses a surgical retractor (10) comprising a handle (70) having a longitudinal axis with proximal and distal ends (see Figures 1-3); a first coupling mechanism (40) adjacent the proximal end of the handle that comprises a knob having a bore (46), wherein the bore is rotatable about the longitudinal axis of the handle (via threads 69); and a blade member (20) having a proximal end and a distal end (see Figures 1-3), wherein said blade member

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comprises a coupling element (threaded region 28, Figure 3) which is configured and dimensioned to be received in the bore of the knob (40) as shown in Figures 2-3. The threaded coupling element (28) of the blade comprises a shaft as shown in Figures 2-3, and wherein the bore has mating threads for receiving said shaft. Furthermore, the coupling element of the blade has an aperture (through the threaded shaft, Figures 2-3; column 4, lines 50-51) which is capable of passing a surgical tool therethrough. The blade of Wells also has a structure (i.e. 26/29) at the distal end which can be used to stabilize the retractor against bone during an operation. Wells discloses a second coupling mechanism (68) located on the handle, which couples to a coupling member (50) for supporting a surgical instrument such as an endoscope (column 4, lines 6-19). As shown in Figure 2, an endoscope located in a recess of a second member (i.e. receptacle 30) can be positioned to provide a view of the distal end of the retractor blade since said distal end of the blade extends past the distal end of said receptacle. Figures 2-3 further shown that the coupling member is telescopically received in the handle. Additionally, Examiner notes the coupling member can be adapted to clamp a portion of the surgical instrument depending on the corresponding size of the instrument within the recess. Wells discloses that surgical instruments other than endoscopes (such as a blade) can be coupled to the retractor via the first coupling mechanism (column 4, lines 23-24).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 11-13, 31-36, 40-41, 44-47, and 49-50 are rejected under 35 U.S.C.

103(a) as being unpatentable over Wells in view of Greenberg (US 5,558,622). Wells discloses the claimed invention as previously described, with the exception of "C" or "L" hook shapes at the distal end of the blade for stabilization against bone. Greenberg discloses a surgical retractor with both "C" and "L" hook-shaped distal ends of the retractor blade that help stabilize the blade against bone (Fig. 5, #58; Fig. 17, #M, and Fig. 20, #71B). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the retractor blade of Wells to a "C" shape or an "L" shape as taught by Greenberg in order to allow for stabilization against bone. Wells also fails to explicitly disclose the steps of creating an appropriate incision in a patient's tissue necessary for the use of a retractor. However, Greenberg discloses a method for treating a bone that includes providing the surgical retractor, making an incision in the soft tissue and elevating the tissue off the bone (Fig. 17, S, SI, OI and M), passing a portion of the blade through the incision and retracting the tissue (Fig. 17, OI), circumventing at least part of the bone with a portion of the blade and stabilizing a portion of the blade on the bone (Fig. 17, #'s 58, 59, and M), and performing a surgical procedure on the bone (Fig. 17, D and P). Therefore, it would have been obvious to

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one having ordinary skill in the art at the time of Applicant's invention to make such an incision in the soft tissue in order to provide a working area for insertion of the retractor during a procedure as taught by Greenberg. Additionally, part of the procedure involves using a surgical tool (D) to pass an orthopedic implant (P) through the cavity (SI) and the aperture of the blade (Fig. 17, #60). The surgical instrument can be a drill (and therefore a burr) (Column 6, lines 22-27) inserted through a drill guide or cannula (Column 2, lines 14-19). The implant secured to the bone can be a bone fastener or a screw (Column 6, lines 22-27) and used in an orthognathic procedure to fixate a fracture (Claim 32) on a bone segment (mandible) that comprises a condylar neck and a ramus.

Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wells in view of Hipps et al. (US 6,228,025). Wells discloses the claimed invention as described in detail above, with the exception of having a second handle transverse to the longitudinal axis. Hipps et al. discloses a surgical retractor with a second handle transverse to the longitudinal axis of the first handle. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the retractor of Wells with a second transverse handle, as taught by Hipps et al., since adding an additional handle will increase the ability to manipulate and more securely grasp the retractor.

Claim 48 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wells in view of Greenberg, as applied to claim 44 above, and further in view of Swaniger (US

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4,769,011). Wells and Greenberg disclose the claimed methods as described above, with the exception of using a grafting procedure. Swaniger discloses methods for mandibular surgery that are well known in the art including a grafting procedure (Column 1, lines 21-24), using a biocompatible bone filler material (Column 1, lines 30-38), and the use of a syringe to implant the bone filler material (Column 2, lines 10-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to perform a grafting procedure as taught by Swaniger in order to augment the alveolar ridge.

Response to Arguments

Applicant's arguments with respect to claims 1, 31 and 52 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please refer to included form PTO-892 for all additional pertinent prior art related to surgical retracting systems.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

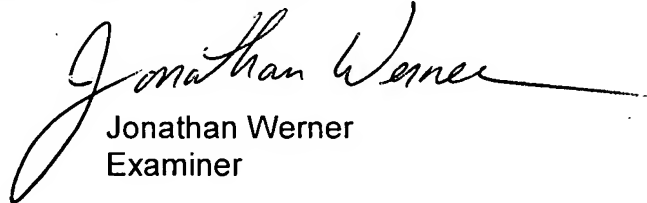
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Werner whose telephone number is (571) 272-2767. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jonathan Werner
Examiner

/Cary E. O'Connor/
Primary Examiner
Art Unit 3732

7/16/07